

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Crocodile Broadcasting Corp., Inc

Licensee of Station KGLA(AM)

Gretna, LA

Facility ID Number: 14538

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) File No.: EB-10-OR-0090

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) NAL/Acct. No.: 201132620001

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) FRN No.: 00008354904

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**FORFEITURE ORDER**

**Adopted:** September 7, 2011

**Released:** September 7, 2011

By the Regional Director, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of fourteen thousand dollars (\$14,000) to Crocodile Broadcasting Corp., Inc., (“CBC”), licensee of Station KGLA(AM), Gretna, Louisiana, for willful and repeated violation of sections 73.1745(a) and 73.3526 of the Commission’s rules (“Rules”).<sup>1</sup> The noted violations involve CBC’s operation at times other than those specified in its license and failure to maintain and make available a complete public inspection file.

**II. BACKGROUND**

2. As discussed in detail in the *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in this case,<sup>2</sup> on October 28 and 29, 2010, agents from the Enforcement Bureau’s New Orleans Office (“New Orleans Office”) observed Station KGLA operating after 8:30 p.m. local time, when its post-sunset authority authorizes it to operate only until 8:30 p.m. local time.<sup>3</sup> On November 2, 2010, agents from the New Orleans Office inspected the station’s main studio during regular business hours. During the inspection, the station’s general manager admitted that the station had been operating at reduced power throughout the night for several years. In addition, the general manager produced a public inspection file for Station KGLA that was missing a copy of the current station authorization, the most recent license application, and the eight most recent quarterly issues/programs lists.

3. In view of the record evidence, the *NAL* proposed a forfeiture of \$14,000 against the licensee for violation of sections 73.1745(a) and 73.3526 of the Rules. CBC submitted a response to the *NAL* “acknowledg[ing] the occurrence of the violations cited in the *NAL*,” but nevertheless requesting

<sup>1</sup> 47 C.F.R. §§ 73.1745(a), 73.3526.

<sup>2</sup> *Crocodile Broadcasting Corp., Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 1173 (Enf. Bur., 2011). A comprehensive recitation of the facts and history of this case can be found in the *NAL*, which is incorporated herein by reference.

<sup>3</sup> Revised Parameters for Operation under Post-Sunset Authority (PSSA), February 28, 2007.

reduction of the proposed forfeiture based on: (1) its mistaken belief that it was authorized to operate at night; (2) its history of compliance with the rules; (3) its “limited resources to devote to public file maintenance”; (4) its broadcast of “programming responsive to community needs and interests during the two years prior to the *NAL*,” and (5) its post-inspection efforts to remedy the public inspection file violation.<sup>4</sup>

### III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with section 503(b) of the Communications Act of 1934, as amended (“Act”),<sup>5</sup> section 1.80 of the Rules,<sup>6</sup> and the *Forfeiture Policy Statement*.<sup>7</sup> In examining CBC’s response, section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>8</sup> As discussed below, we have considered CBC’s response in light of these statutory factors and do not reduce the proposed forfeiture.

5. Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.<sup>9</sup> The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act<sup>10</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>11</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>12</sup> “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.<sup>13</sup>

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<sup>4</sup> See Letter from Howard M. Weiss, Counsel for Crocodile Broadcasting Corp., Inc., to District Director, New Orleans Office, Enforcement Bureau, March 28, 2011 (“*NAL Response*”).

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</sup> *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

<sup>8</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>9</sup> 47 U.S.C. § 312(f)(1).

<sup>10</sup> H.R. Conf. Rep. No. 97-765, at 51 (1982) (“This provision [inserted in section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., section 503) . . . . As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission’s application of those terms . . .”).

<sup>11</sup> See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California Broadcasting Co.*”).

<sup>12</sup> See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (“*Callais Cablevision, Inc.*”) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

<sup>13</sup> *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

6. As CBC does not deny any of the facts set forth in the *NAL*, we find that CBC willfully and repeatedly violated sections 73.1745(a) and 73.3526 of the Rules by operating at times not specified in its license and failing to maintain and make available a complete public inspection file. Moreover, we find that CBC has failed to provide any justification to reduce the proposed forfeiture.

7. CBC requests that “its lack of intent to violate the rules [and operate at night without authorization] be taken into account in mitigation.”<sup>14</sup> It is well established, however, that intent to violate the law is unnecessary for a violation to be willful.<sup>15</sup> Because CBC consciously operated its station after 8:30 p.m. local time, it is irrelevant whether it mistakenly thought it had nighttime authority. We note that a Media Bureau letter to CBC dated only a few months before the agents observed the nighttime operations at issue specifically stated that Station KGLA is licensed for “daytime-only operation.”<sup>16</sup> Any “misunderstanding” by CBC as to its nighttime authority should have been cleared up at that time, yet Station KGLA apparently persisted in its nighttime operations.<sup>17</sup>

8. We also find that CBC is not entitled to a reduction based on its history of compliance with the rules. The Commission may take into account the duration of a violation in considering whether a licensee has a history of overall compliance.<sup>18</sup> Although CBC has not received a prior written sanction, CBC admitted in this proceeding to operating at night for several years, in violation of the Rules and in disregard for the Media Bureau’s denial of the licensee’s request for an STA for nighttime operation. Given the long-standing nature of this violation and licensee’s the lack of attention to the Media Bureau letter, we do not find a reduction based on history of compliance is warranted.

9. We also reject CBC’s claim that the proposed forfeiture should be reduced based on unsupported assertions about its financial resources. CBC states that it “is a small broadcaster whose fortunes has suffered as a consequence of the aftermath of Hurricane Katrina, the BP oil spill in 2010, and the recent failure of its antenna,” and “has limited resources to devote to public file maintenance.”<sup>19</sup> CBC does not, however, assert that it would be unable to pay the forfeiture and failed to produce any financial documentation to support its inability to pay claim. As such, CBC has not demonstrated an inability to pay the proposed forfeiture amount.

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<sup>14</sup> *NAL Response* at 2.

<sup>15</sup> *See supra* note 10.

<sup>16</sup> *See* Letter from Charles N. Miller, Engineer, Audio Division, Media Bureau, to Francisco R. Montero, Esq., Fletcher, Heald & Hildreth, P.L.C., dated July 30, 2010. In response to a request for special temporary authority (“STA”), the letter denied the request for an STA for nighttime operation, summarizing the procedural history of Station KGLA’s nighttime operations authority and explaining that, because Station KGLA did not propose nighttime operation in its 1988 application for a construction permit, Station KGLA is licensed for daytime-only operation. CBC asserts that it thought Station KGLA had nighttime authority even after July 2010 because of the “circumstances” surrounding its 1988 permit application and its failure to carefully read the letter from the Media Bureau. CBC “acknowledges that this misunderstanding is that of the licensee, but asks that its lack of intent to violate the rules be taken into account in mitigation.” *See NAL Response* at 2. As discussed above, it is irrelevant whether CBC mistakenly thought it had nighttime operating authority. Moreover, mitigating the forfeiture on these grounds would only serve to reward CBC for its lack of attention to the terms of its station authorization and to Commission correspondence.

<sup>17</sup> *See supra* note 16.

<sup>18</sup> *See Commercial Radio Service Corp.*, Forfeiture Order, 16 FCC Rcd 3543, 3545 (Enf. Bur. Tech. & Pub. Safety Div., 2001) (denying a reduction for a history of overall compliance where the licensee operated eleven specialized mobile radio stations without authorization for five months); *LSM Radio Partners, LLC*, Forfeiture Order, 25 FCC Rcd 10631 (Enf. Bur. 2010) (denying a reduction for history of overall compliance where the licensee operated without operational Emergency Alert System equipment for approximately 21 months).

<sup>19</sup> *NAL Response* at 2.

10. Finally, with regard to the public file violation, CBC states that it has broadcast programming responsive to local needs, and that while it admittedly failed to maintain issues/programs lists in its public inspection file, as required by section 73.3526 of the Rules, it has since corrected the violation. We find no basis on which to reduce the forfeiture amount on these grounds. CBC admits that it violated section 73.3526, and a licensee's correction of a violation after an inspection is expected – it does not nullify or mitigate any prior forfeitures or violations.<sup>20</sup>

11. For these reasons, pursuant to section 503(b) of the Act, and in conjunction with the *Forfeiture Policy Statement*, we conclude that cancellation or reduction of the proposed \$14,000 forfeiture is not warranted.

#### IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission's Rules, Crocodile Broadcasting Corp., Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of fourteen thousand dollars (\$14,000) for violations of sections 73.1745(a) and 73.3526 of the Rules.<sup>21</sup>

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for enforcement pursuant to Section 504(a) of the Act.<sup>22</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. CBC shall also send electronic notification on the date said payment is made to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov).

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<sup>20</sup> See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994) (finding attempts to comply with licensing requirements following initial violation are expected and do not warrant reduction or cancellation of forfeiture); *Rama Communications, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 4981 (Enf. Bur. 2009) (finding post-inspection correction of tower painting, tower fencing, public inspection file and overpower operation violations is expected and does not warrant reduction or cancellation of forfeiture); *Bethune-Cookman College, Inc.*, Forfeiture Order, 24 FCC Rcd 4513 (South Central Region 2009) (finding installation of required EAS decoder after an inspection is expected and does not warrant reduction or cancellation of forfeiture); *International Broadcasting Corporation*, Order on Review 25 FCC Rcd 1538 (2010) (finding post-inspection attempts to paint and register antenna structure are expected and do not warrant reduction or cancellation of forfeiture). [Switch order of cases to reverse chronological]

<sup>21</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 73.1745(a), 73.3526.

<sup>22</sup> 47 U.S.C. § 504(a).

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by both First Class and Certified Mail Return Receipt Requested to Crocodile Broadcasting Corp., Inc. at its address of record and to its counsel, Howard M. Weiss, Fletcher, Heald & Hildreth, PLC, 1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton  
Regional Director, South Central Region  
Enforcement Bureau